SUPREME COURT, U. S.

1970

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No. 1002

In The

Supreme Court of the United States

OCTOBER TERM 1969

GEORGE RIVERA SANTANA,

Petitioner,

v.

THE STATE OF TEXAS

Respondent.

PETITIONER'S REPLY BRIEF

H. Ernest Griffith
1216 Texas Ave.
Lubbock, Texas 79401

Charles L. Waters
715 Lubbock National Building
Lubbock, Texas 79401

Attorneys for Petitioner

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondent, by brief in opposition, is contending that this case is moot and that therefore there is no controversy for this honorable court to adjudicate. Petitioner denies and disputes this and the other contentions of Respondent.

ARGUMENT AND AUTHORITIES

Respondent concedes that the mootness criteria as pronounced in *Sibron v. New York*, 392 U.S. 40 (1968) should be applicable to this case. It is true that Petitioner has been discharged from the custody of the Texas Youth Council; however, by applying the *Sibron* criteria it can readily be seen that Respondent, by discharging Petitioner, is denying him effective appellate review. In addition, Petitioner may suffer adverse, collateral legal consequences as a result of his adjudication of delinquency. Petitioner has a substantial stake in the adjudication of delinquency which survives the satisfaction of the confinement imposed on him.

1. The Case Is Not Moot Because The State Should Not Be Allowed To Deny Petitioner Effective Legal Review By The Mere Subterfuge Of An Administrative Discharge From The Custody Of The Texas Youth Council Made After Petitioner Had Asked This Honorable Court For Review.

The first criteria in *Sibron*, that a state should not be able to effectively deny a convict access to the courts by imposing a minor sentence which will expire before review can be obtained, should also apply in this type of case because of the mere expedient of the Texas Youth Council in discharging a juvenile when such juvenile's case is in the process of appellate review. If this criteria is not applied in this type of case, many juveniles will be denied effective appellate review.

In addition, Respondent has overlooked an express statutory pronouncement that nothing in the Act relating to the

Texas Youth Council shall affect the right of appeal. Petitioner was committed to the Texas Youth Council in accordance with TEX. REV. CIV. STAT. Art. 5143d (1957). Petitioner was committed to the Texas Youth Council by Order of the Juvenile Judge, said Order of Commitment stating:

> IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the said George Rivera Santana be committed to the care, custody and control of the Texas Youth Council in accordance with the provisions of S. B. 305, enacted by the 55th Legislature, Regular Session, 1957, and codified as Article 5143d, Vernon's Texas Civil Statutes.

Section 14 of that Act provides:

> The right of a child who has been adjudged delinquent to appeal from the adjudication or from the order of commitment shall not be affected by anything in this Act.

The language "affected by anything in this Act" includes Section 17(e) relating to discharge. Thus Respondent, for this additional reason, cannot now say that the case is moot. The statute expressly recognizes the right of appeal irrespective of the action of the Texas Youth Council.

2. The Case Is Not Moot Because There Are Collateral Legal Consequences Which Will Affect Petitioner.

The second criteria in *Simon*, that of collateral legal consequences imposed because of the conviction of a crime (here the adjudication of delinquency), is also ap-

plicable in this case. Petitioner refutes Respondent's assertion that there are no such collateral consequences here.

Respondent refers to TEX. REV. CIV. STAT. Art. 2338-1 (13)(e) (1967) for the proposition that evidence given in the Juvenile Court shall not be admissible as evidence against the child in any proceeding in any court other than the Juvenile Court. However, this statute must be read in the light of TEX. REV. CIV. STAT. Art. 5143d (33) (1957), which provides:

> A commitment to the Youth Council shall not be received in evidence or used in any other way in any proceedings in any court except in subsequent proceedings for delinquency against the same child, and except in imposing sentence in any criminal proceedings against the same person. (emphasis added)

The two statutes [(Art. 2338-1(13)(e) was formerly Art. 2338-1 (13) (1959)] were construed in *Hultin v. State*, 351 S.W.2d 248 (Tex. Crim. App. 1961), and Art. 5143d (33) was held to allow the introduction of testimony in a criminal trial which had also been adduced in an earlier juvenile delinquency proceeding involving the same person. There is also the possibility that a juvenile's delinquency record could be considered by a federal court in a sentencing proceeding for a subsequent federal crime. Fed. Rules Crim. Proc. Rule 32 (1962).

Another collateral legal consequence arises because of TEX. REV. CIV. STAT. Art. 2338-1 (15) (1969), which provides in part:

> [i] Information on juvenile cases in the grade of felony shall be made available by the court to the agencies

responsible for the implementation of the federal Omnibus Crime Control and Safe Streets Act of 1968.

The apparent purpose of this 1969 amendment is to aid in the enforcement of federal firearms legislation [(18 U.S.C. 922 (1968)] aimed at preventing both the sale of firearms to convicted felons and the transportation in interstate commerce of prohibited weapons by felons.

Although Petitioner has been discharged from the Texas Youth Council, he is still subect to the jurisdiction of the Juvenile Court until he becomes twenty-one (21) years of age. Under the provisions of TEX. REV. CIV. STAT. Art. 2338-1 (14) (1965), the Juvenile Court:

> [m]ay resume jurisdiction at any time subsequent to the release or parole conditions and restrictions placed on the child by the agency of the State charged with the care, training, and control of and parole of delinquent children and may retain jurisdiction until the child is twenty-one (21) years of age if not already discharged by the court.

With regard to the powers of the Juvenile Court, the same article continues:

> A petition may be filed with the committing court requesting the reopening of the case of a child who has been committed by the court to the custody of an institution, agency, or person; . . . the court may make a further order or commitment.

Thus it can be seen that Petitioner is subject to further disposition by the court. He has been discharged by the Texas Youth Council but not by the Juvenile Court.

There are many other very serious collateral consequences which have resulted from this stigma upon Petitioner's record. This stigma has seriously affected his friends, classmates, neighbors, teachers, and the local law enforcement officials who harass him to the extent of taking him from his home when local offenses are committed in which a Mexican-American youth is involved. It may be true that it is provided by statute that an adjudication of delinquency imposes no disabilities insofar as civil service applications are concerned; however, employers do seem to learn of past records and regardless of whether a civil service position is involved or not. To say that past records are not given heavy weight is ignoring the truth.

It is no secret that the Armed Services are able to ascertain a juvenile's past record; many such juveniles are consequently denied an opportunity for this patriotic duty.

Finally, the consequences to the youth himself must be considered, as the mental effect on a youth must indeed not be taken lightly.

CONCLUSION

For the reasons stated above, Petitioner submits that his case has not become moot and further submits that Respondent is in error in contending that due process and equal protection have not been violated in this case. Petitioner prays that the Petition for Writ of Certiorari be granted; however, should this Honorable Court decide to dismiss the Petition, Petitioner prays that any order of dismissal also vacate the judgment below.

Respectfully submitted,

H. Ernest Griffith
1216 Texas Ave.
Lubbock, Texas 79401

Charles L. Waters
715 Lubbock National Building
Lubbock, Texas 79401

Counsel of Record for Petitioner